

Executive Summary – Enforcement Matter – Case No. 43439

Magnablend, Inc.

RN104603907

Docket No. 2012-0251-MLM-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Fish kill

Media:

MLM – AIR, IHW

Small Business:

No

Location(s) Where Violation(s) Occurred:

Magnablend Central Facility, 1601 West Highway 287 Bypass, Waxahachie, Ellis County

Type of Operation:

Chemical blending plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: September 28, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$38,500

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$38,500

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 43439
Magnablend, Inc.
RN104603907
Docket No. 2012-0251-MLM-E

Investigation Information

Complaint Date(s): October 18, 2011

Complaint Information: Alleged nausea by odors following a fire at the Facility.

Date(s) of Investigation: October 24, 2011 and March 15, 2012

Date(s) of NOE(s): April 19, 2012

Violation Information

1. Failed to prevent an unauthorized discharge of fire water runoff into or adjacent to water in the State [TEX. WATER CODE § 26.121 and 30 TEX. ADMIN CODE § 335.4].
2. Failed to prevent a nuisance condition from impacting off property receptors and a traffic hazard [TEX. ADMIN. CODE §§ 101.4 and 101.5 and 30 TEX. HEALTH & SAFETY CODE § 382.085(b)].
3. Failed to submit an initial notification of an emissions event into the State of Texas Environmental Electronic Reporting System within 48 hours of discovery of the event [TEX. ADMIN. CODE § 101.201(g) and 30 TEX. HEALTH & SAFETY CODE § 382.085(b)].
4. Failed to prevent unauthorized emissions. Since the emissions event could have been prevented through better maintenance practices and was reported late, Respondent is precluded from asserting the affirmative defense under 30 TEX. ADMIN. CODE § 101.222 [30 TEX. ADMIN. CODE § 116.110(a)(4), Permit-By-Rule Registration No. 81557, and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures at the Plant:

- a. On October 3, 2011, ceased Plant operations as a result of the fire;
- b. On October 12, 2011, submitted the emissions event notification for Incident 160425;
- c. By October 24, 2011, installed portable air compressors and spargers to oxygenate the water; and
- d. By October 28, 2011, removed and disposed of all dead fish.

Technical Requirements:

N/A

Executive Summary – Enforcement Matter – Case No. 43439

Magnablend, Inc.

RN104603907

Docket No. 2012-0251-MLM-E

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division,
Enforcement Team 3, MC R-04, (817) 588-5886; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Stephen Barnish, CFO, Magnablend, Inc., 1601 West Highway 287
Bypass, Waxahachie, Texas 75165

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES

Assigned

23-Jan-2012

PCW

30-Jan-2012

Screening

25-Jan-2012

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Magnabland, Inc.

Reg. Ent. Ref. No. RN104603907

Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No.

43439

Docket No.

2012-0251-MLM-E

Media Program(s)

Industrial and Hazardous Waste

Multi-Media

No. of Violations

1

Order Type

Findings

Government/Non-Profit

No

Enf. Coordinator

Cheryl Thompson

EC's Team

Enforcement Team 3

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1

\$30,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0.0%

Enhancement

Subtotals 2, 3, & 7

\$0

Notes

No adjustment for Compliance History.

Culpability

No

0.0%

Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5

\$0

Economic Benefit

Total EB Amounts

\$548

Approx. Cost of Compliance

\$1,000,000

0.0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6

\$0

SUM OF SUBTOTALS 1-7

Final Subtotal

\$30,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

\$30,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$30,000

DEFERRAL

0.0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

\$30,000

Screening Date 25-Jan-2012

Docket No. 2012-0251-MLM-E

PCW

Respondent Magnablend, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43439

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104603907

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 25-Jan-2012

Docket No. 2012-0251-MLM-E

PCW

Respondent Magnablend, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43439

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104603907

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121 and 30 Tex. Admin Code § 335.4

Violation Description

Failed to prevent an unauthorized discharge of fire water run-off into or adjacent to water in the State. Specifically, due to the actions taken to extinguish the fire that occurred at the Facility on October 3, 2011, an unauthorized discharge of fire water run-off and other potential chemicals and waste from the Plant traveled along a storm water ditch that flows south of the Facility and through an unnamed tributary located on private property, then to three stock ponds. Approximately 2,200 dead fish were observed in the ponds between October 24, 2011 and October 28, 2011.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 4

5 Number of violation days

mark only one with an x	daily	x
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$30,000

Four daily events are recommended from the period of October 24, 2011 (date impact first documented) through October 28, 2011 (date removed and disposed of all dead fish).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet good faith criteria for this violation.

Violation Subtotal \$30,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$548

Violation Final Penalty Total \$30,000

This violation Final Assessed Penalty (adjusted for limits) \$30,000

Economic Benefit Worksheet

Respondent Magnablend, Inc.
 Case ID No. 43439
 Reg. Ent. Reference No. RN104603907
 Media Industrial and Hazardous Waste
 Violation No. 1

Percent Interest 5.0
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
 Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$1,000,000	24-Oct-2011	28-Oct-2011	0.01	\$548	n/a	\$548
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to oxygenate the water with portable air compressors and spargers, to properly dispose of the dead fish, to pump the contaminated water from the pond, to treat and discharge water to a local publicly owned treatment works. Date required is the investigation date. Final date is the date the fish were removed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000,000

TOTAL

\$548



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES

Assigned
PCW

24-Apr-2012
26-Apr-2012

Screening

25-Apr-2012

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent Magnabland, Inc.
Reg. Ent. Ref. No. RN104603907
Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 43439
Docket No. 2012-0251-MLM-E
Media Program(s) Air
Multi-Media Industrial and Hazardous Waste

No. of Violations 2
Order Type Findings
Government/Non-Profit No
Enf. Coordinator Cheryl Thompson
EC's Team Enforcement Team 3

Admin. Penalty \$ Limit Minimum \$0 Maximum \$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0.0%

Enhancement

Subtotals 2, 3, & 7

\$0

Notes

No adjustment for compliance history.

Culpability

No

0.0%

Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5

\$0

Economic Benefit

Total EB Amounts \$6,500
Approx. Cost of Compliance \$6,500

0.0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6

\$0

SUM OF SUBTOTALS 1-7

Final Subtotal

\$4,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

112.5%

Adjustment

\$4,500

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Enhancement to capture the avoided costs associated with Violation Nos. 1 and 2.

Final Penalty Amount

\$8,500

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$8,500

DEFERRAL

0.0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

\$8,500

Screening Date 25-Apr-2012

Docket No. 2012-0251-MLM-E

PCW

Respondent Magnablend, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43439

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104603907

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 25-Apr-2012

Docket No. 2012-0251-MLM-E

PCW

Respondent Magnablend, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43439

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104603907

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4, 101.5, and 116.110(a)(4); Permit-By-Rule
Registration No. 81557; and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent unauthorized emissions. Specifically, the emissions event on October 3, 2011 (Incident No. 160425) was the result of a Plant-wide fire. The Respondent did not meet the criteria for an affirmative defense under 30 Tex. Admin. Code § 101.222 because the emissions event was avoidable by better operational practices and was not properly reported. In addition, the Respondent failed to prevent a nuisance condition from impacting off property receptors and a traffic hazard that resulted in road closure. Specifically, TCEQ staff documented nuisance conditions including odor and transitory health effects downwind of the Plant on October 3, 4, and 5, 2011 and United States Highway 287 was closed due to smoke over the roadway on October 3, 2011.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

3 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3,500

Violation Final Penalty Total \$7,969

This violation Final Assessed Penalty (adjusted for limits) \$7,969

Economic Benefit Worksheet

Respondent Magnablend, Inc.
 Case ID No. 43439
 Reg. Ent. Reference No. RN104603907
 Media Air
 Violation No. 1

Percent Interest 5.0
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
 Item Description No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$3,500	3-Oct-2011	5-Oct-2011	0.00	\$0	\$3,500	\$3,500

Notes for AVOIDED costs

Estimated avoided costs to train operators in order to control emissions and prevent nuisance conditions and to implement improved operational and maintenance procedures in order to prevent a recurrence of similar emissions events. The Date Required is the date the nuisance conditions began and the Final Date is the date the nuisance conditions ended.

Approx. Cost of Compliance \$3,500

TOTAL \$3,500

Screening Date 25-Apr-2012

Docket No. 2012-0251-MLM-E

PCW

Respondent Magnablend, Inc.

Policy Revision 3 (September 2011)

Case ID No. 43439

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104603907

Media [Statute] Air

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 101.201(g) and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to submit an initial notification of an emissions event into the State of Texas Environmental Electronic Reporting System ("STEERS") within 48 hours of discovery of the event. Specifically, Incident No. 160425 began and was discovered on October 3, 2011, however, the initial notification was not submitted into STEERS until October 12, 2011.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
			x

Percent 1.0%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1

9 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,000

Violation Final Penalty Total \$531

This violation Final Assessed Penalty (adjusted for limits) \$531

Economic Benefit Worksheet

Respondent Magnablend, Inc.
Case ID No. 43439
Reg. Ent. Reference No. RN104603907
Media Air
Violation No. 2

Percent Interest 5.0
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount
Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)	\$1,000	5-Oct-2011	12-Oct-2011	0.00	\$0	\$1,000

Notes for AVOIDED costs

Estimated avoided costs for improving the training procedures for the recordkeeping/reporting system for timely submittal of emissions event notifications. The Date Required is the date the notification was due and the Final Date is the date the notification was submitted.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,000

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600282594	Magnablend, Inc.	Classification: AVERAGE	Rating: 2.63
Regulated Entity:	RN104603907	MAGNABLEND CENTRAL FACILITY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	EDA002B	
	POLLUTION PREVENTION PLANNING	ID NUMBER	P07344	
	INDUSTRIAL AND HAZARDOUS WASTE	EPA ID	TXR000079057	
	INDUSTRIAL AND HAZARDOUS WASTE	SOLID WASTE REGISTRATION # (SWR)	88421	
	AIR NEW SOURCE PERMITS	REGISTRATION	81557	
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	EDA002B	
	AIR NEW SOURCE PERMITS	AFS NUM	4813901661	
	IHW CORRECTIVE ACTION	SOLID WASTE REGISTRATION # (SWR)	88421	
Location:	1601 W HIGHWAY 287 BYP, WAXAHACHIE, TX, 75165			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 27, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 25, 2007 to January 25, 2012			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson		Phone:	(817) 588-5886

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 01/17/2012 (976304)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MAGNABLEND, INC.
RN104603907**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2012-0251-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Magnablend, Inc. ("the Respondent") under the authority OF TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a chemical blending plant located at 1601 West Highway 287 bypass, Waxahachie, Texas (the "Plant") that discharged fire run-off water

into a private pond located southwest of John Arden Drive and North Grand Avenue in Waxahachie, Ellis County, Texas.

2. The Plant involves or involved the management of industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
4. During an investigation on October 24, 2011, TCEQ staff documented that, due to the actions taken to extinguish the fire that occurred at the Plant on October 3, 2011, an unauthorized discharge of fire water run-off and other potential chemicals and wastes from the Plant traveled along a storm water ditch that flows south of the Plant and through an unnamed tributary located on private property, then to three stock ponds. Approximately 2,200 dead fish were observed in the ponds between October 24, 2011 and October 28, 2011.
5. During an investigation conducted on March 15, 2012, TCEQ staff documented that the Respondent did not to prevent a nuisance condition from impacting off property receptors and a traffic hazard that resulted in road closure. Specifically, TCEQ staff documented nuisance conditions including odor and transitory health effects downwind of the Plant on October 3, 4 and 5, 2011 and United States Highway 287 was closed due to smoke over the roadway on October 3, 2011.
6. During an investigation conducted on March 15, 2012, TCEQ staff documented that the Respondent did not submit an initial notification of an emissions event into the State of Texas Environmental Electronic Reporting System ("STEERS") within 48 hours of discovery of the event. Specifically, Incident No. 160425 began and was discovered on October 3, 2011, however, the initial notification was not submitted into STEERS until October 12, 2011.
7. During an investigation conducted on March 15, 2012, TCEQ staff documented the release of unauthorized emissions that resulted from of a Plant-wide fire that occurred on October 3, 2011 (Incident No. 160425).
8. The Respondent received notice of the violations on January 23, 2012.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Plant:
 - a. On October 3, 2011, ceased Plant operations as a result of the fire;
 - b. On October 12, 2011, submitted the emissions event notification for Incident No. 160425;

- c. By October 24, 2011, installed portable air compressors and spargers to oxygenate the water; and
- d. By October 28, 2011, removed and disposed of all dead fish.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 4, the Respondent failed to prevent an unauthorized discharge of fire water runoff into or adjacent to water in the State, in violation of TEX. WATER CODE § 26.121 and 30 TEX. ADMIN CODE § 335.4.
3. As evidenced by Findings of Fact No. 5, the Respondent failed to prevent a nuisance condition from impacting off property receptors and a traffic hazard, in violation of TEX. ADMIN. CODE §§ 101.4 and 101.5 and 30 TEX. HEALTH & SAFETY CODE § 382.085(b).
4. As evidenced by Findings of Fact No. 6, the Respondent failed to submit an initial notification of an emissions event into "STEERS" within 48 hours of discovery of the event, in violation of TEX. ADMIN. CODE § 101.201(g) and 30 TEX. HEALTH & SAFETY CODE § 382.085(b).
5. As evidenced by Findings of Fact No. 7, the Respondent failed to prevent unauthorized emissions, in violation of 30 TEX. ADMIN. CODE § 116.110(a)(4), Permit-By-Rule Registration No. 81557, and TEX. HEALTH & SAFETY CODE § 382.085(b). Since the emissions event could have been prevented through better maintenance practices and was reported late, the Respondent is precluded from asserting the affirmative defense under 30 TEX. ADMIN. CODE § 101.222.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of Thirty-Eight Thousand Five Hundred Dollars (\$38,500) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Thirty-Eight Thousand Five Hundred Dollar (\$38,500) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Thirty-Eight Thousand Five Hundred Dollars (\$38,500) as set forth in Section II, Paragraph 7 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Magnablend, Inc., Docket No. 2012-0251-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

TCEQ ENFORCEMENT

Fax: 512-239-2550

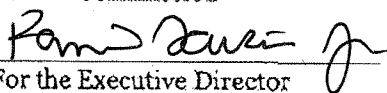
Oct. 18 2012 07:06am P007/007

Magnablend, Inc.
DOCKET NO. 2012-0251-MLM-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

11/16/12

Date


I, the undersigned, have read and understand the attached Agreed Order in the matter of Magnablend, Inc. I am authorized to agree to the attached Agreed Order on behalf of Magnablend, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Magnablend, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

10/19/2012
Date

STEPHEN BARNISH

CFO
Title

Name (Printed or typed)
Authorized Representative of
Magnablend, Inc.

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.